

Introduced by Senator Ortiz

February 17, 2005

An act to add Section 3100.5 to the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

SB 359, as introduced, Ortiz. Child custody.

Existing law requires a court to consider, when there is a protective order that has been directed to a parent, whether the best interest of the child requires that any visitation by a parent be supervised, suspended, or denied.

This bill would require a court to impose supervised visitation, notwithstanding a stipulation to the contrary by the parties or recommendations by the mediator, when the court has granted visitation to a parent, and has been made aware of evidence of risk to the child indicating that it is necessary to protect the child from risk of harm due to physical or sexual abuse, neglect, substance abuse by a parent or a member of the parent's household, or domestic violence perpetrated by that parent or the risk of abduction by a parent. The bill would prohibit a court from granting unsupervised visitation to a parent who has a felony conviction of any specified offense or any conviction of a lewd or lascivious act on a child under 14 years of age, except as specified. The bill would also require a court to find by a preponderance of the evidence that a biological or adoptive parent, to whom the child is attached and who plays an important developmental role in the child's life, poses a risk to the child, as specified, before denying visitation or imposing supervised visitation on that parent.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 3100.5 is added to the Family Code, to read:

3100.5. (a) The Legislature finds and declares that children who are placed in the unsupervised custody of, or who are permitted to have unsupervised visitation with, a perpetrator of child abuse or domestic violence are at risk for many reasons, including the following: direct child abuse by the perpetrator; exposure to acts of domestic violence; being used by the perpetrator as weapons for post separation reprisal against an ex-spouse; or being taught to become perpetrators or victims of domestic violence themselves. It is the intent of the Legislature that the courts seek to protect children from harm that is the result of children being placed in the unsupervised custody of perpetrators of child abuse or domestic violence.

(b) Notwithstanding a stipulation to the contrary by the parties or recommendations by the mediator, the court shall impose supervised visitation when the court has granted visitation to a parent and the court has been made aware of evidence of risk to the child indicating that supervised visitation is necessary to protect the child from risk of harm due to physical or sexual abuse, neglect, substance abuse by a parent or member of the parent's household, or domestic violence perpetrated by that parent or the risk of abduction by a parent.

(c) (1) Except as provided in paragraph (2), a court may not grant unsupervised visitation to a parent who has either of the following:

(A) A felony conviction of any of the following:

(i) Murder or manslaughter.

(ii) Attempted murder.

(iii) Mayhem.

(iv) Rape as defined in Section 261 or 262 of the Penal Code.

(v) Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person.

(vi) Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person.

(vii) Assault with the intent to commit mayhem, rape, sodomy, or oral copulation in violation of Section 220 of the Penal Code.

(viii) Commission of rape or sexual penetration in concert with another person in violation of Section 264.1 of the Penal Code.

(ix) Continuous sexual assault of a child in violation of Section 288.5 of the Penal Code.

(x) Domestic violence as defined in Section 13700 of the Penal Code.

(xi) Child abuse or neglect as defined in Section 11165.6 of the Penal Code.

(xii) Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug.

(B) Any conviction of a lewd or lascivious act on a child under 14 years of age.

(2) A court may grant unsupervised visitation to a parent described in paragraph (1) only if the court has made a determination regarding each of the following:

(A) If the parent is restrained by a protective order granted after a hearing, that he or she has complied with its terms and conditions.

(B) That the parent has successfully completed with a positive prognosis a batterer's treatment program that meets the criteria outlined in subdivision (c) of Section 1203.097 of the Penal Code, if the parent has been convicted of domestic violence or the court has ordered the parent to attend a batterer's treatment program.

(C) That there is a preponderance of evidence the parent has not committed any further acts of sexual or violent assault, domestic violence, child abuse, or substance abuse.

(D) If the parent is on probation or parole, that he or she has complied with its terms and conditions.

(E) That the parent has successfully completed with a positive prognosis, and continues to meet the standards of, any court-ordered program of alcohol or drug abuse counseling.

(F) That the parent has completed with a positive prognosis, and continues to meet the standards of, any court ordered classes, counseling, or therapy programs ordered to reduce the risk of harm to the child due to abuse or neglect.

(d) A court order granting unsupervised custody or visitation to a person with a conviction specified in paragraph (1) of subdivision (c) is valid only if it contains the court's specific written reasons for granting unsupervised visitation and a statement that the court has made the determinations required in paragraph (2) of subdivision (c).

(e) For purposes of making a determination under this section, an evaluator or investigator may access criminal records, probation reports, and information from any court ordered programs, including, but not limited to, batterer's treatment, alcohol abuse, drug abuse, parenting, and child abuse prevention programs.

(f) (1) Before denying visitation altogether or imposing supervised visitation on a biological or adoptive parent to whom the child is attached and who plays an important developmental role in the child's life, the court shall find by a preponderance of the evidence that the parent poses a risk to the child due to one or more of the following:

(A) Child abuse or neglect as described in Section 11165.6 of the Penal Code.

(B) Domestic violence, as defined in Section 13700 of the Penal Code, perpetrated by the parent.

(C) Risk of abduction by the parent.

(D) Substance abuse.

(E) The parent is a person described in subparagraph (B) of paragraph (1) of subdivision (c).

(2) The court may not conclude that a parent is not the primary caretaker if the parent is absent or relocates for the reasons described in Section 3046.

(g) The court's decision to deny visitation, impose supervised visitation, or modify an order denying visitation or imposing supervised visitation, may be based on any admissible evidence including, but not limited to, evidence produced by an investigation, evaluation, or mediation. The court's decision may not be based solely on the recommendation of, or a conclusion reached by, a mediator, evaluator, or investigator, but shall be based on independent consideration of any evidence presented by the parties.

(h) If the court has evidence that is the basis for a reasonable suspicion that a parent is putting a child at risk of harm due to

1 child abuse, domestic violence, or substance abuse, or the threat
2 or risk of abduction by the parent, the court shall make an interim
3 order denying visitation or imposing supervised visitation to
4 protect the child until the court has determined the measures
5 necessary to protect the child on a permanent basis.

6 (i) Any evaluation, investigation, or assessment conducted to
7 determine the need for an order denying visitation rights,
8 imposing court ordered supervised visitation, or modifying an
9 order denying visitation or imposing supervised visitation shall
10 be conducted by an evaluator or investigator who meets the
11 qualifications set forth in Section 3110.5.